

Nos. 25-1641, 25-1705

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UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

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STATE OF IOWA, et al.,  
*Plaintiffs-Appellees,*

v.

COUNCIL ON ENVIRONMENTAL QUALITY, et al.,  
*Defendants,*

and

ALASKA COMMUNITY ACTION ON TOXICS, et al.,  
*Intervenor Defendants-Appellants / Intervenors,*

and

STATE OF WASHINGTON, et al.,  
*Intervenors / Intervenor Defendants-Appellants.*

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Appeal from the U.S. District Court for the District of North Dakota  
No. 1:24-cv-00089-DMT-CRH (Hon. Daniel M. Traynor)

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**JOINT MOTION TO SET BRIEFING SCHEDULE FOR MOTIONS TO  
DISMISS AND TO STAY MERITS BRIEFING**

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This matter is a set of consolidated appeals from the district court's judgment vacating the Council on Environmental Quality's final 2024 Rule, 89 Fed. Reg. 35442 (May 1, 2024). Intervenor Defendants-Appellants Alaska Community Action on Toxics, et al. (ACAT) and Intervenor Defendants-Appellants State of Washington, et al. (State Defendants) plan to move the

Court to dismiss these appeals as moot and to request that the Court vacate the district court's judgment. While all parties agree that the appeals are moot, the parties have different positions on whether the Court should vacate the district court's judgment. The parties accordingly jointly request that the Court set a consolidated briefing schedule for ACAT's and State Defendants' motions to dismiss and vacate, and that the Court stay its current appellate briefing schedule and all other deadlines set in the Court's Consolidated Appeal Briefing Schedule Order issued on April 11, 2025.

1. The parties propose the following schedule for briefing on ACAT's and State Defendants' forthcoming motions:

- April 30, 2025: ACAT and State Defendants file motions.
- May 30, 2025: Federal Defendants and State Plaintiffs each file consolidated responses.
- June 20, 2025: ACAT and State Defendants each file consolidated replies.

2. Fed. R. App. P. 26(b) permits modifying the briefing schedule for good cause. Under Fed. R. App. P. 27(a)(3), the default briefing schedule to respond to a motion is 10 days, and any reply must be filed 7 days after a response. There is good cause to modify the default schedule for briefing on ACAT's and State Defendants' forthcoming motions for the following reasons:

a. Federal Defendants/Plaintiff States statement:

Filing consolidated responses to ACAT and State Defendants' motions will require significant resources and time. Federal parties must work closely with high-level officials at the Council on Environmental Quality to develop the federal government's position in this case, and any draft response must undergo review by high-level officials within the U.S. Department of Justice. Some of these officials are still onboarding and may require significant time to become familiar with this case. Plaintiff States also require time to coordinate and ensure that any briefing is amenable to the broader body. Having time to draft and then ensure that the different State parties are amenable and consent to the filing is vital to an orderly process.

b. ACAT:

ACAT has no opposition to providing Appellees with additional time to respond to its motion, and requires additional time of its own to reply due to existing commitments in other cases, including an argument by its counsel in the Fifth Circuit Court of Appeals scheduled for June 2, 2025.

c. State Defendants' statement:

State Defendants do not oppose the proposed briefing schedule which provides Appellees with additional time to respond to the State Defendants' motion. State Defendant require additional time as well for reply as it takes

additional time coordinate a reply among our coalition of eleven states and the District of Columbia bringing the motion.

3. Under this Court's Consolidated Appeal Briefing Schedule Order, Appellant briefs are due June 2, 2025, and Appellee briefs and Appellant replies are due thereafter according to the Court's schedule. Courts have "broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706 (1997); *see also Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); *Sierra Club v. U.S. Army Corps of Eng'rs*, 446 F.3d 808, 816 (8th Cir. 2006). Because ACAT and State Defendants plan to move to dismiss their appeals as moot, and Federal Defendants and Plaintiff States agree that these appeals are moot, this Court should stay the merits briefing schedule. Staying the merits briefing schedule will avoid unnecessary expense for the parties and facilitate speedy disposition of these appeals.

### **CONCLUSION**

For the foregoing reasons, the Court should set the aforementioned briefing schedule for ACAT and State Defendants' forthcoming motions to dismiss and vacate, and stay the Court's current appellate briefing schedule.

Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

This motion complies with the type-volume limitations of Federal Rule of Appellate Procedure 27(d) because, excluding the parts of the document exempted by Rule 32(f), the document contains 655 words. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Rule 32(a)(6) because the document has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Calisto MT font.

s/ Elizabeth Harris  
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## **CERTIFICATE OF SERVICE**

I hereby certify that on April 23, 2025, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

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